TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~522~~. 472

JAMES MURRAY, CLAIMANT OF THE BARK MARY MERRITT,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED DECEMBER 11, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 522.

JAMES MURRAY, CLAIMANT OF THE BARK MARY MERRITT, APPELLANT.

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Certified copy of record from district court	1	1
Libel and information	2	1
Monition	7	3
Return to monition	8	4
Certificate of value	10	5
Claimant's stipulation	11	5
Exceptions to libel	15	7
Decree sustaining exceptions and dismissing libel	16	7
Certificate of clerk of district court	17	8
CIRCUIT COURT PROCEEDINGS.		
Hearing	18	8
Order reversing decree of district court	18	8
Answer	19	9
Exceptions to answer	24	11
Order sustaining exceptions to answer	28	12
Order that monition issue to executors of G. D. Norris, deceased	29	12
Monition to executors of G. D. Norris, deceased	29	13
Appearance of executors of G. D. Norris, deceased	31	13
Decree	31	14
Appeal	33	14
Appeal bond	34	15
Clerk's certificate	35	15
Citation and return	36	15

1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

At a special term of the circuit court of the United States for the eastern district of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday (being the third day) of April, A. D. 1871—present and presiding, the Honorable Thomas Drummond, circuit judge; Charles S. Hamilton, marshal; Edward Kurtz, clerk—

Among other, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
THE BARK MARY MERRITT, HER BOATS, &C., James Murray, claimant. } Appeal in admiralty.

Be it remembered that, heretofore, to wit, on the fourth day of February, A. D. 1870, a certified copy of record of said cause in the district court of the United States for the district of Wisconsin, was received from the clerk of said court and filed in the clerk's office of this court, as follows, to wit:

RECORD FROM DIST. COURT.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

2 At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the thirteenth day) of September, A. D. 1869—present, the Honorable Andrew G. Miller, judge of said court, presiding—

Among other the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
against
THE BARK MARY MERRITT, HER BOATS, tackle, apparel, and furniture, James Murray, claimant. } In admiralty.

Be it remembered that, heretofore, to wit, on the tenth day of June, A. D. 1869, came G. W. Hazelton, U. S. district attorney for the district of Wisconsin, and presented to the court an information against the bark Mary Merritt, her boats, tackle, apparel, and furniture, as follows:

Information.

District court of the United States for the district of Wisconsin. In admiralty.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

The libel and information of G. W. Hazelton, attorney of the United States for the district of Wisconsin, who prosecutes on behalf of the

United States, and being present here in court, in his proper
3 person, in the name and on the behalf of the United States against the bark "Mary Merritt," her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

First. That Samuel T. Hooker, collector of the customs for the district of Milwaukee, in the district of Wisconsin aforesaid, on the ninth day of June, A. D. 1869, at the city and port of Milwaukee, and within the district of Wisconsin, on waters that are navigable from the sea by vessels of ten or more tons burthen, to wit, on the navigable waters of the United States, seized as forfeited to the use of the United States, the vessel commonly called the bark "Mary Merritt," her tackle, apparel, and furniture, being the property of citizens of the United States whose names are not known, and that said bark Mary Merritt is of about three hundred forty-seven tons burthen.

Second. That the said bark "Mary Merritt" heretofore, to wit, on the first day of January, A. D. 1868, and from thence up to the time of the seizure hereinbefore mentioned, was owned wholly by citizens of the United States, and was not owned by and did not belong to a citizen or citizens, subject or subjects of Canada, or of any foreign country; that the said bark "Mary Merritt" is a foreign-built vessel; that is to
4 say, said vessel was built in Canada, and within the dominions of Her Brittan'ic Majesty, Victoria, the Queen of England; that, during the whole or a greater portion of the time between the said first day of January, 1868, and the time of the seizure hereinbefore specified, the said bark "Mary Merritt" has been employed in transporting foreign goods, chattels, and merchandise, all the products of the British dominions aforesaid, from British Canadian ports to ports within the United States; and especially that the said bark Mary Merritt, on or about the tenth day of June, 1868, arrived at the port of Chicago, in the State of Illinois, from Canada, with a cargo of lumber, the product and manufacture of Canada; and also that, on the 8th day of June, A. D. 1869, the said bark "Mary Merritt" arrived at the port of Milwaukee, in the State of Wisconsin, from the port of Kingston, Canada, where she received her cargo, with a cargo of one hundred and fifty tons of pig-iron, the product and manufacture of the dominions of Her Brittan'ic Majesty, Queen Victoria, to wit, the product and manufacture of Canada, in the British Possessions; that the said bark "Mary Merritt" was then and there, to wit, at the said port of Milwaukee, on the said
5 ninth day of June, 1869, seized by the collector aforesaid, by reason of the violation of the acts of Congress of the United States in such case made and provided in respect to the premises aforesaid; and that by force and virtue of the said acts of Congress in such case made and provided, the said bark, her tackle, apparel, and furniture became and are forfeited to the use of the said United States, and that the same are now in custody of the collector aforesaid. And the said attorney saith,

Lastly. That all and singular the premises aforesaid are and were true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the said attorney prays the usual process and monition of this honorable court in this behalf to be made, and that all persons interested in the before-mentioned bark, Mary Merritt, may be cited in general and special to answer the premises, and all due proceedings being had, that the said bark, her tackle, &c., may, for the causes aforesaid, and others appearing, be condemned by the definite sentence and

decree of this honorable court, as forfeited to the uses of the said United States, according to the form of the statute of the said United States in such case made and provided.

G. W. HAZELTON,
U. S. Att'y, Dist. Wisconsin.

6 *Order for process, advert., &c.*

Whereupon it is ordered by the court that process issue to the marshal, returnable on the twenty-eighth day of June, instant, at eleven o'clock in the forenoon, and that this court will, on that day, proceed to the trial and hearing thereof; and it is further ordered that notice be given, by advertisement, in the Daily Milwaukee News, a daily newspaper published in the city of Milwaukee, and by notices posted in the most public manner, at and near the place of trial, for at least fourteen days.

Whereupon a monition issued, as follows:

7 DISTRICT OF WISCONSIN, *ss:*

[L. S.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas an information hath been filed in the district court of the United States for the district of Wisconsin, on the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine by Gerry W. Hazelton, attorney of the United States for the district of Wisconsin, against the bark Mary Merritt, her boats, tackle, apparel, & furniture for the reasons and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said bark Mary Merritt, her boats, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said bark Mary Merritt, her boats, &c., may, for the causes in the said information mentioned, be condemned and sold to pay the demands of the United States of America:

You are therefore hereby commanded to attach the said bark Mary Merritt, her boats, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said information that they be and appear before the said court, to be held in and for the district of Wisconsin, on the twenty-eighth day of June, instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third.

J. M. MILLER, *Clerk.*

GERRY W. HAZELTON,
United States District Attorney.

8 *Return.*

In obedience to the within-named writ, I have this day seized the within-named bark Mary Merritt, her boats, tackle, apparel, & furniture, this 11th day of June, 1869, and have given due notice to all persons claiming the same by advertising in the Daily Milwaukee News, and by posting notices, that this court will, on the 28th day of June, instant, at eleven o'clock, in the forenoon of that day, if the same shall be a day of jurisdiction, otherwise on the first day of jurisdiction, proceed to trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

Fees $5.16.

C. S. HAMILTON, *Marshal.*
A. TOWNSEND, *Deputy.*

JUNE 11TH, 1869.—This day came James Murray, the claimant of the said bark Mary Merritt, and presented his stipulation for costs in the sum of two hundred and fifty dollars, with William Young and Greenleaf D. Norris, as sureties, conditioned that they shall abide and answer the decree of this court, in this cause, as to costs," as follows:

9 *Stipulation for costs.*

District court of the United States for the district of Wisconsin.

[Breach revenue laws.]

Whereas an information was filed, on the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by the United States of America against the bark Mary Merritt, her boats, &c., for the reasons and causes in the said information mentioned; and whereas the said bark is in the custody of the marshal under the process issued in pursuance of the prayer of said information, as appears from the monition, now on file in said court:

Appearing personally James Murray as the claiment of the said bark Mary Merritt, and produced for sureties William Young & Greenleaf D. Norris, and the said James Murray, William Young, & Greenleaf D. Norris, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred and fifty dollars, unto the said United States of America, that the said James Murray shall abide and answer the decree of the said court in the aforesaid cause as to costs; and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JA'S MURRAY.
W'M YOUNG.
G. D. NORRIS.

Taken and açknowledged this 11th day of June, 1869, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

W'm Young & Greenleaf D. Norris, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth

the sum of fifteen thousand dollars over and above all his just debts and liabilities.

W'M YOUNG.
G. D. NORRIS.

Sworn to this 11th day of June, 1869, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

10 *Certificate of value.*

And same day, (June 11th, 1869,) came the United States District Attorney, G. W. Hazleton, and Samuel T. Hooker, collector of customs, and James Murray, the claimant, and presented their certificate: "We hereby agree that the value of the bark Mary Merritt is the sum of fifteen (15) thousand dollars;" and by consent it is ordered by the court that the said bark Mary Merritt, her boats, tackle, &c., be discharged from custody upon said claimant giving a stipulation, with sureties, in the sum of thirty thousand dollars, that sum being double the amount agreed upon as aforesaid as the value of said bark.

And same day, (June 11th, 1869,) came the claimant and presented his stipulation in the sum of thirty thousand dollars, with William Young and Greenleaf D. Norris as sureties, conditioned that they shall abide and answer the decree of this court in this cause, as follows:

11 *Claimant's stipulation.*

District court of the United States for the district of Wisconsin.

[Breach revenue laws.]

Whereas an information was filed on the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by the United States of America against the bark Mary Merritt, her boats, tackle, apparel, & furniture, for the reasons and causes in the said information mentioned; and whereas the said bark is in the custody of the marshal under the process issued in pursuance of the prayer of said information, as appears from the monition, now on file in said court:

Appearing personally James Murray as the claiment of the said bark Mary Merritt, and produced for sureties William Young & Greenleaf D. Norris, and the said James Murray, W'm Young, & Greenleaf D. Norris, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of thirty thousand dollars, unto the said States of America, that the said James Murray shall abide and answer the decree of the said court in the aforesaid cause; and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JA'S MURRAY.
W'M YOUNG.
G. D. NORRIS.

Taken and acknowledged this 11th day of June, 1869, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

William Young & Greenleaf D. Norris, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

WM YOUNG.
G. D. NORRIS.

Sworn to this eleventh day of June, 1869, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

12 Whereupon it is ordered by the court that a warrant of restitution issue as follows:

13 *Warrant of restitution.*

DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by the United States of America, against the bark Mary Merritt, her boats, tackle, apparel, & furniture, praying that the same may be condemned as forfeited to the said libellant; and whereas the said bark Mary Merritt, her boats, &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also, a claim has been interposed and filed in said court by James Murray, and such proceedings have been thereupon had that, by the sentence and decree of said court in this cause, made and pronounced on the tenth day of June, eighteen hundred and sixty-nine, the said bark Mary Merritt, her boats, was adjudged to belong as claimed, and was ordered to be restored to the said claimant: Therefore you, the said marshal, are hereby commanded to release the said bark Mary Merritt, her boats, &c., from arrest, and to deliver and return the same unto the said James Murray.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 11th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of these United States the 93d.

J. M. MILLER, *Clerk.*

14 *Return.*

In obedience to the within warrant I have this 11th day of June, 1869, released the schooner Mary Merritt, her boats, tackle, &c., from arrest.

Service, $2.00.

C. S. HAMILTON, *Marshal.*
By A. TOWNSEND, *Deputy.*

JULY 17, 1869.—This day came the claimant, by his proctors, Mess. Emmons & Van Dyke, and filed their exceptions to the libel & information as follows:

15 *Exceptions to libel & information.*

District court of the United States for the district of Wisconsin.

The exception of James Murray, claimant, to the libel & information of G. W. Hazelton, attorney of the United States for the district of Wisconsin, against the barque "Mary Merritt," her tackle, apparel, & furniture, & against all persons intervening for their interest therein.

The said James Murray, claimant of the said barque Mary Merritt, comes now, &, by leave of the court, alleges exception to the libel & information of the said prosecutor, & for cause of exception suggests:

That it is not in and by the said libel & information alleged & propounded, that her Britannic Majesty's government, or the Dominion of Canada, has or had, prior to the date of the alleged offences in the said libel & information propounded, adopted a regulation similar to that which is contained in section one of chapter XXXI, entitled "An act concerning the navigation of the United States, approved March 1, 1817.

And the said claimant is advised & submits that, for the reason and on account of such omission, the said libel & information should be dismissed; & he prays that the same may be dismissed accordingly.

EMMONS & VAN DYKE,
Proctors for Claimant.

Hearing.

16 AUGUST 30th, 1869.—This day came the U. S. district attorney, and came the claimant by his counsel, and the exceptions to the information were argued, and the court held the same under advisement.

And now, at this same term, (September term, 1869,) and on the twenty-ninth day thereof, to wit, on the sixth day of December, A. D. 1869, the following proceedings were had, to wit:

Decree.

THE UNITED STATES OF AMERICA
vs.
THE BARK MARY MERRITT, HER BOATS, tackle, apparel, & furniture, JAMES MURRAY, claimant. } Admiralty.

This day came the district attorney, and also the claimant by his counsel, and the exceptions to the libel of information being argued, on consideration whereof it is ordered by the court, that the said exceptions be sustained; and it is further ordered and decreed by the court, that the said libel of information be, and is hereby, dismissed. It is certified by the court that there was probable cause of seizure.

A. G. MILLER.

Decree signed, recorded, and enrolled December 6, 1869.

J. M. MILLER, *Clerk.*

Appeal.

And the district attorney, now here in open court, prayed an appeal to the circuit court of the United States for the district of Wisconsin.

Whereupon it is ordered by the court that an appeal be, and hereby is, granted.

17 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[SEAL.] J. M. MILLER, *Clerk.*

18 And afterwards, to wit, at a stated term of the said circuit court, begun and held according to law at the city of Milwaukee, on the second Monday (being the eleventh day) of April, A. D. 1870, and on the tenth day thereof, to wit, on the 21st day of April, A. D. 1870, the following proceedings were had, to wit:

Hearing in circuit court.

This day came the district attorney and also the claimant, by his counsel, Mr. Emmons, and this cause came on to be heard before the Honorable Thomas Drummond, circuit judge, and the hearing being concluded, the same was held under advisement.

And afterwards, to wit, at a stated term of said circuit court, begun and held according to law, at the city of Milwaukee, on the first Monday (being the third day) of October, A. D. 1870 and on the 32nd day thereof, to wit, on the eighth day of November, A. D. 1870, the following proceedings were had, to wit:

Order reversing decree of dist. court.

THE UNITED STATES OF AMERICA
vs
THE BARK MARY MERRITT, HER BOATS, &c.
James Murray, claimant.
} Appeal in admiralty.

This day came the parties by their counsel, and on consideration of the cause and the arguments of said counsel, it is ordered, adjudged, and decreed, by the Honorable Thomas Drummond, circuit judge,
19 that the decree of the district court sustaining the exceptions to the libel of information and dismissing the said libel, be, and hereby is, reversed.

And it is further ordered, adjudged, and decreed, by the said circuit judge, that the said exceptions to the libel be, and hereby are, overruled, and that the respondent answer the said libel by the first Monday of December next.

Order extending time to answer.

DECEMBER 2, 1870.—This day came the claimant by his proctor, and on his motion it is ordered by the court that the time for filing his answer be, and hereby is, extended until the second Monday of January, next.

JANUARY 16, 1871.—This day came the respondent, James Murray, by his proctor, Mr. Emmons, and filed his answer, as follows:

Answer.

Circuit court of the United States for the eastern district of Wisconsin.

The answer of James Murray, of St. Catherines, Ontario, in the Dominion of Canada, to the libel of Gerry W. Hazelton, attorney of the United States for the district of Wisconsin, prosecuting on behalf of the United States of America, against the barque Mary Merritt, her tackle, &c.

And the said James Murray, respondent, for answer to the said libel, alleges & propounds as follows:

First. That this respondent is a subject of Her Majesty, Victoria,
20 Queen of England, & that he is the true bona-fide owner of the said barque Mary Merritt, & that no other person is the owner thereof:

Second. This respondent admits the seizure, & for the alleged reasons mentioned in the first article of the libel; but he denies that said vessel had in fact become forfeited as therein assumed.

Third. This respondent admits the importation of the two cargoes of merchandise into the ports of Chicago & Milwaukee, mentioned in the libel; but he denies that the said cargo of pig-iron was the product or manufacture of the Dominion of Canada; but, on the contrary thereof, was, as he verily believes, the product & manufacture of Scotland in the kingdom of Great Britian. He further admits that at the time of such importations of said cargo's, the said vessel was wholly owned by citizens of the United States; but he denies that by reason thereof the said vessel became forfeited as alleged in the libel.

Fourth. This respondent, further answering, & as to all the matters & things alleged & set forth in said libel, says that, at the time of the importation of the said cargo of lumber into the port of Chicago, & at the time of the said cargo of iron into the port of Milwaukee, neither the imperial government of Great Britain nor the government of the Dominion of Canada had adopted any regulation or regulations which
21 prohibited the importations of goods, wares, or merchandise into the kingdom of Great Britain or into the Dominion of Canada from any foreign port or place, except in British vessels, or vessels of the Dominion of Canada, or in such foreign vessels as truly & wholly belonged to the citizens or subjects of that country of which the goods were the growth, production, or manufacture, or from which such goods, wares, or merchandise could only be, or most usually were first shipped for transportation. On the contrary, the respondent avers that, by the laws of the imperial government of Great Britain, & the regulations thereof, & by the laws & regulations of the Dominion of Canada, the vessels of the United States were left free of & were absolved from any & all the restraints & prohibitions contained in section one (1) of chapter thirty-one, of the act of Congress, approved March 1, 1817; and this respondent claims the benefit of the proviso contained in section one of said act.

Fifth. This respondent, further answering, says that said barque Mary Merritt, was built at St. Catherines in Canada, (now Ontario,) in the year 1865, and and was then & there duly registered in the name of & owned by Lewis Shickluna, a British subject & citizen; that subsequently, William L. Trice & Stephen C. Trice, who were & are citizens of the United States, & this respondent, became the owners thereof; that since the filing of the libel herein, this respondent has become the sole owner of said vessel.

22

Sixth. This respondent, further answering, & upon his information & belief, avers the truth to be that, during at least the period of ten years last past, large numbers of British-bottomed vessels, that is to say, vessels built in Canadian (latterly Dominion of Canada) ports & places, & owned wholly or in part by citizens of the United States, & without any act of naturalization under the laws of the United States, have been engaged in transporting goods, wares, & merchandise from ports & places in Canada, & the Dominion of Canada, such goods, wares, & merchandise being of the growth, production, & manufacture of the Dominion of Canada or of Great Britain, & importing the same into the United States, at ports & places along the river St. Lawrence, & around the whole chain of lakes; that the same has been so done publicly & unmolestedly & with the knowledge of the officers of the customs of the United States; that, at the time of the importation of the cargo's of lumber & iron complained of in this cause, respondent was the master of said vessel, & had been since 1865, when he became part owner thereof, as aforesaid, & had been made aware of the facts here in this article alleged, & was advised that he could lawfully transport such goods, wares, & merchandise, on board his said vessel & import the same into the United States; that, at the time of the importations complained of in this cause, the fact that the said vessel was not wholly owned by British subjects, was matter of public record in the office of the collector of customs of the port of Chicago, Illinois, as also the fact that said barque was not a vessel of the United States, but was a British vessel; that this respondent made or attempted no concealment whatever at either of the times of the importations complained of in this cause, & such importations were made in the utmost good faith on his part, in the full belief & confidence that the same were lawful, & without any attempt or intention on his part to defraud or evade the revenue or navigation laws of the United States; and he avers, & upon his information & belief, that said William L. & Stephen C. Trice were equally innocent of such attempt or intention.

23

JA'S MURRAY.

N. J. EMMONS, *Proctor for Respondent.*

24 ONTARIO, DOMINION OF CANADA, *ss:*

On this 12 day of January, A. D. 1871, before me, the undersigned, personally appeared James Murray, the respondent in the foregoing answer, & made oath that he had read the same & knew the contents thereof, & that the same is true, as he verily believes.

[SEAL.]

JNO. M. LANDER,
Judge County Court of Lincoln and a Court of Record in the Province of Ontario.

FEBRUARY 10, 1871.—This day came the district attorney, Mr. Levi Hubbell, and filed exceptions to said answer as follows:

Exceptions to answer.

Circuit court of the United States for the eastern district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
THE BARQUE MARY MERRITT, HER BOATS, tackle, apparel, & furniture, James Murray, claimant.

Exceptions taken by the attorney of the United States to the answer of James Murray, respondent in this cause.

First exception.—For that the allegations contained in the fourth article of said answer in the words following:

"This respondent further answering, &c., as to all the matters
25 and things alleged and set forth in the said libel, says that, at the time of the importation of the said cargo of lumber into the port of Chicago, and at the time of the said cargo of iron into the port of Milwaukee, neither the imperial government of Great Britain nor the government of the Dominion of Canada had adopted any regulation or regulations which prohibited the importation of goods, wares, or merchandise into the kingdom of Great Britain or into the Dominion of Canada from any foreign port or place, except in British vessels or vessels of the Dominion of Canada, or in such foreign vessels as truly and wholly belonged to citizens or subjects of that country of which the goods were the growth, production, or manufacture, or from which such goods, wares, or merchandize could only be, or most usually were, first shipped for transportation. On the contrary, the respondent avers that, by the laws of the imperial government of Great Britain and the regulations thereof, and by the laws and regulations of the Dominion of Canada, the vessels of the United States were left free of, and were absolved from, every and all the restraints and prohibitions contained in section one of chapter thirty-one of the acts of Congress, approved March 1, 1817; and this respondent claims the benefit of the proviso contained in section one of said act," are impertinent and irrele-
26 vant, and ought to be expunged.

Second exception.—For that the allegations contained in the sixth article of said answer, in the words following, to wit: "This respondent, further answering, and upon his information and belief, avers the truth to be that, during at least the period of ten years last past, large numbers of British-bottomed vessels, that is to say, vessels built in Canadian (latterly Dominion of Canada) ports and places, and owned wholly or in part by citizens of the United States, and without any act of naturalization under the laws of the United States, have been engaged in transporting goods, wares, and merchandize, from ports and places in Canada and the Dominion of Canada, such goods, wares, and merchandize, being of the growth, production, and manufacture of the Dominion of Canada or of Great Britain, and importing the same into the United States, at ports and places along the river St. Lawrence, and around the whole chain of lakes; that the same has been so done publicly and unmolestedly, and with the knowledge of the officers of the customs of the United States; that, at the time of the importation of the cargo's of lumber and iron complained of in this cause, respondent was the master of said vessel, and had been since 1865, when he became part
27 owner as aforesaid, and had been made aware of the facts here

in this article alleged, and was advised that he could lawfully transport such goods, wares, and merchandize on board his said vessel and import the same into the United States; that, at the time of the importations complained of in this cause, the fact that the said vessel was not wholly owned by British subjects, was matter of public record in the office of the collector of customs of the port of Chicago, Illinois, as also the fact that said barque was not a vessel of the United States, but was a British vessel; that this respondent made or attempted no concealment whatever at either of the times of the importations complained of in this cause, and such importations were made in the utmost good faith, on his part, in the full belief and confidence that the same were lawful, and without any attempt or intention on his part to defraud or evade the revenue or navigation laws of the United States; and he answers, upon his information and belief, that said William L. & Stephen C. Trice were equally innocent of such attempt or intention," are impertinent and irrelevant, and ought to be expunged.

In all which particulars the said attorney of the United States insists that the respondent's said answer is irrelevant and impertinent;
28 wherefore he excepts thereto and humbly prays that the impertinence of the said answer excepted to as aforesaid may be expunged with costs.

LEVI HUBBELL,
U. S. Attorney Eastern Dist. of Wisconsin.

And now, at this same term, to wit, April term, 1871, and on the fifteenth day thereof, to wit, on the 20th day of April, A. D. 1871, the following proceedings were had, to wit:

Order sustaining exceptions to answer.

THE UNITED STATES OF AMERICA
vs.
THE BARK MARY MERRITT, JAMES MURRAY, claimant. } Appeal in admiralty.

This day the exceptions to the answer came on to be heard, and were argued by the district attorney and Mr. Lynd, in support of, and by Mr. Emmons, against the same, and submitted. On consideration whereof, it is ordered by the court (the Hon. Thomas Drummond, circuit judge, presiding alone) that the said exceptions be, and hereby are, sustained.

And afterwards, to wit, on the sixteenth day of said term, to wit, on the 21st day of April, A. D. 1871, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
29 THE BARK MARY MERRITT, JAMES MURRAY, claimant. } Appeal in admiralty.

Upon the petition in writing, of Levi Hubbell, district attorney, this day filed, setting forth that Greenleaf D. Norris, one of the stipulators of the claimant, is dead, and that John H. Van Dyke, John Bradford, and Alice Norris are his executors, it is ordered by the Honorable Thomas Drummond, circuit judge, that a monition issue against said executors to appear before this court on Saturday, the 22nd, day of April,

inst., at ten o'clock in the forenoon, to show cause why judgment should not be entered against them as such executors, upon the stipulation herein filed.

Whereupon a monition issued, as follows, to wit:

Monition.

Circuit court of the United States for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to the marshal of the eastern district of Wisconsin, greeting:

Whereas a libel and information hath been filed in the district court of the United States for the district of Wisconsin against the bark Mary Merritt, her boats, &c., by the United States of America, in a cause of forfeiture;

30 And whereas it appears that said vessel was released to the claimant on stipulation, executed by the said claimant and William Young & Greenleaf D. Norris, as stipulators; and it further appearing to the court that the said bark was subject to forfeiture on the prayer of said libel, and that Greenleaf D. Norris, one of the stipulators, has deceased during the pendency of said suit, and that John H. Van Dyke, John Bradford, and Alice Norris, of the city of Milwaukee, are the executors of the last will & testament of the said Greenleaf D. Norris:

Now, therefore, we do hereby empower and command you, the said marshal, that you summon the said John H. Van Dyke, John Bradford, and Alice Norris, executors, as aforesaid, to appear before said circuit court on Saturday, the twenty-second day of April, inst., at ten o'clock in the forenoon, to show cause, if any they have, why judgment should not be entered against them, as executors of the estate of said Greenleaf D. Norris, dec'd, upon the stipulation filed in said cause; and have you then and there this writ with your return thereon.

Witness the Hon Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in said district, this 21st day of April, A. D. 1871, and of our Independence the ninety-fifth.

EDWARD KURTZ, *Clerk.*

LEVI HUBBELL, *U. S. Att'y.*

31. *Return.*

I hereby accept service & enter appearance of the within-named executors.

N. J. EMMONS, *Attorney.*

And afterwards, to wit, on the 17th day of said term, to wit, on the 22nd day of April, A. D. 1871, the following proceedings were had, to wit:

Decree.

THE UNITED STATES OF AMERICA
vs.
THE BARK MARY MERRITT, HER BOATS, &C., James Murray, claimant. } Appeal in admiralty.

This cause came on to be further heard at this term, on the libel of information, and the answer and exceptions to said answer, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the exceptions filed by the attorney of the United States to the answer of the claimant be, and the same are, sustained, and so much of the answer as is included in said exceptions, is ordered expunged; and the advocate for the claimant, thereupon, electing to abide by said exceptions, and submitting the case upon the libel of information and the answer and exceptions thereto, the cause having been argued by the advocates of the respective parties, and on due deliberation, the court (the Honorable Thomas Drum-
32 mond, circuit judge, presiding alone) doth now order, adjudge, and decree that, the bark Mary Merritt, her boats, tackle, apparel, and furniture, mentioned in the libel of information in this cause, being a foreign-built vessel, and owned by citizens of the United States, and having imported goods, wares, and merchandise into the United States in violation of the acts of Congress, thereby became forfeited as is claimed in said libel.

And it appearing that Greenleaf D. Norris, one of the sureties in the stipulation, is dead, on motion of Levi Hubbell, district attorney, it is further ordered that a summary judgment be, and the same is hereby, entered against James Murray, the claimant, and William Young, one of the sureties, and John H. Van Dyke, John Bradford, and Alice Norris, executors of Greenleaf D. Norris, the other surety, (said executors having been cited and appearing in court by counsel,) for the sum of fifteen thousand dollars, the amount of the bond and stipulation filed in this cause on the delivery of the bark Mary Merritt to the said claimant, together with the costs of this suit; and that the libellant have execution thereon to satisfy this decree, the said amount to be levied of goods and chattels of the said James Murray and William Young, or of the goods and chattels of Greenleaf D. Norris in the hands of the
33 said executors as aforesaid to be administered, if they or either of them have so much thereof in his or their hands to be administered.

Appeal.

And came the claimant, by his proctor, and prayed an appeal to the Supreme Court of the United States; whereupon it is ordered by the court that the said appeal be, and hereby is, allowed, and that said claimant give bond in the penalty of two hundred and fifty dollars, with sureties to be approved, conditioned to prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good.

And same day, appeal bond in the penalty of two hundred & fifty dollars, with William Young and John L. Ranney as sureties, approved by the court, filed. Whereupon it is ordered by the court that execution be susperseded and a citation issued.

And which said appeal bond is as follows:

34 Know all men by these presents that we, James Murray, of St. Catherine, Canada, as principal, & William Young & John L. Ranney, of Milwaukee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred & fifty dollars, to be paid to the said United States of America; to which payment, well and truly to be made, we bind ovrselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-second day of April, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court between The United States of America against the barque Mary Merritt, decree was rendered against the said barque Mary Merritt and the said James Murray, claimant & respondent in said suit, having prayed & been allowed an appeal from said decree to the Supreme Court of the United States:

Now the condition of the above obligation is such, that if the said James Murray shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JA'S MURRAY. [L. S.]
W'M YOUNG. [L. S.]
JOHN L. RANNEY. [L. S.]

Signed and delivered in presence of—
N. J. EMMONS.

Approved by the court, and supersedeas ordered.

A. G. MILLER,
Dis. Judge.

35 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of The United States vs. The Bark Mary Merritt.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said eastern district of Wisconsin, this fifth day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the said United States the ninety-sixth.

[SEAL.] EDWARD KURTZ, *Clerk.*

36 The United States of America to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein James Murray, claimant of the bark Mary Merritt, her boats, &c., is appellant, and you are appellee, to show cause, if any there be, why the decree passed against the said James Murray, claimant as aforesaid, should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-second day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the 95th.

[SEAL.]

A. G. MILLER,
District Judge.

I accept service of above citation this 24th day of June, A. D. 1871.

LEVI HUBBELL,
U. S. Att'y Eastern Dis't of Wisconsin.

(Indorsement on cover:) No. 522. James Murray, claimant of the bark Mary Merritt, appellant, vs. The United States of America. E. Wisconsin C. C. U. S. Filed 11th December, 1871.

SUPREME COURT

— OF THE —

UNITED STATES.

JAMES MURRAY, Claimant of the Barque Mary Merritt,

Appellant,

VERSUS

THE UNITED STATES OF AMERICA.

BRIEF FOR APPELLANT.

N. J. EMMONS,

Attorney and of Counsel for Appellant.

SUPREME COURT

—OF THE—

UNITED STATES.

JAMES MURRAY, Claimant of the Barque Mary Merritt,
Appellant,
vs.
THE UNITED STATES OF AMERICA.

BRIEF FOR APPELLANT.

The vessel in question, the barque *Mary Merritt*, was seized by the Collector of Customs for the District of Milwaukee, as forfeit, for an alleged violation of the act of Congress of March 1st, 1817, "concerning the navigation of the United States." (3 U. S. St. at Large, 351.)

The first section of the act provides: "That after the thirtieth day of September next, no goods, wares or merchandise, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or

manufacture; or from which such goods, wares or merchandise can only be, or most usually are, first shipped for transportation: *Provided, nevertheless*, that this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt a similar regulation."

The second section declares the vessel and cargo coming into the United States in violation of those provisions, forfeited.

Afterwards information was exhibited in which it was alleged that the vessel was wholly owned by citizens of the United States; that she was a foreign-built vessel, that is to say, she was built in Canada, within the dominions of Her Majesty, Victoria, Queen of England; that while thus owned, she had, on the 10th of June, 1868, imported from Canada into the port of Chicago, Illinois, a cargo of lumber, the product and manufacture of Canada; and that also on the 8th of June, 1869, she had imported from Canada into the port of Milwaukee, Wisconsin, a cargo of one hundred and fifty tons of pig iron, the product and manufacture of Her Majesty's dominions.

To this libel and information the claimant interposed an exception for "that it is not in and by the said libel and information alleged and propounded, that Her Britannic Majesty's government, or the Dominion of Canada, has or had prior to the date of the alleged offences * * adopted a regulation similar to that which is contained in section one of chapter thirty-three, entitled 'an act concerning the navigation of the United States,' approved March 1, 1817."

Hearing upon the exception was had without reference to any question of pleading; exception sustained, and libel of information dismissed. On appeal, the Circuit Court reversed this judgment, and claimant ordered to answer.

[Intermediate the filing of the libel, and the coming in of the answer, the claimant had become the sole owner of the vessel.]

The answer alleges:

First. That Respondent is a British subject, and sole owner of the vessel.

Second. Admits the seizure for reasons alleged, but denies forfeiture.

Third, Admits the importations, and that at the time the vessel was wholly owned by citizens of the United States

Fourth. Alleges as matter of fact, that at the time of said importations, neither the Imperial Government, or that of the Dominion of Canada, had adopted any regulation similar to that contained in section one of the act of March 1, 1817.

Fifth. Admits that the vessel was built in Canada, and formerly wholly owned by British subjects; that American citizens had thereafter become owners, and averring that since the filing of the libel, the Respondent had become sole owner.

Sixth. In substance, that the trade and traffic in question, and importations under like circumstances, had been carried on and made for a long period of years, throughout the whole chain of lakes, with the knowledge of the officers of the customs, and without molestation; and that the importation of the cargoes of lumber and iron, alleged to be illegal, were publicly done, and without concealment, or intent or motive to violate the law, and in full belief that such importations were lawful.

To the *fourth* and *sixth* articles of the answer the attorney of the United States excepted. The Circuit Court sustained the exceptions, and pronounced decree of forfeiture. From this decree appeal is made to this Court.

We propose to discuss here, only the questions arising under the fourth article of the answer and the exception thereto.

ERROR ASSIGNED.

That the Court erred in sustaining the libellant's exception to the *fourth* article of Respondent's answer.

First Point.—If the *Merritt* is a *foreign* vessel—as she needs must be to bring her within the provisions of the act—she most certainly was British, or Canadian, it matters not which. As such, she would not be liable, falling within the proviso to section one, "that this regulation shall not extend to the vessel of any foreign nation which has not adopted and which shall not adopt a similar regulation."

The only reported case I have been able to find, giving construction to the act of 1817 is that of

The Ship Recorder, 1 Blatch. C. C. Rep., 218, decided in 1847.

In this case Judge Betts, in an elaborate opinion, gives a full exposition of the act, its motive and intent, as collected from surrounding events and history. It was reciprocal in its character, and intended to retaliate upon Great Britain her unfriendly legislation on the subject, commencing with the act of twelfth Charles II—"an act for the encouraging and increasing shipping and navigation," (chap. 18, sec. 4, 7 British St. at Large, 452,) and continued by numerous subsequent enactments, all of which were supposed to have been reserved in force by the convention between the United States and Great Britain of July 3, 1815.

No issue was raised in the case of *The Recorder*, either by the pleadings or on argument, whether there was at the time any existing legislation on the part of Great Britain, similar to our own prohibitory act. It was assumed that the former enactments continued in force. We are not here held to an inquiry into the fact whether there were any existing similar regulations by the Imperial Governmant or by Canada. Our averment of fact is, that there were none; that on the contrary, American vessels were freed and absolved from all such restraints. This averment stands admitted by the exception; and it becomes unnecessary for us to quote authority to show the unqualified repeal by Parliament, long prior to the alleged offense, of all its legislation on the subject.

It would be desirable, in view of the fact that all the foreign trade of the lake commerce is carried on between the Canadas and the United States, to obtain an expression of the opinion of the Court, whether, in the present case, we are to look to the laws and regulations of the Dominion, or to those of the Imperial Government.

Our averment as respects the Dominion, was made in the belief, that it had become, in regard to this subject matter, a "country," within the meaning of the act of 1817.

The act of the Imperial Parliament establishing the Dominion of Canada, 30 Victoria, chap. 3, (2 Vol. Law Reports Statutes, Sec 91, p. 21,) provides: * * * "the exclusive Legislative Authority of the Parliament of *Canada* extends to all matters coming within the Classes of Subjects next-hereinafter enumerated; that is to say:

* * * * * * *

2. The Regulation of Trade and Commerce.

* * * * * * *

10. Navigation and Shipping."

Enumerating in all, twenty-eight subjects, which in their character would naturally pertain to a central government.

The qualified veto power, reserved as a royal prerogative, in Sections 55, 56 and 57, of the act, does not, we think, exclude the idea of executive and legislative authority over the subject in the Dominion government, and which we regard as the test, whether it be the "country" to whose rules and regulations we are to look to.

SECOND. If the *Merritt* was not a *foreign* vessel—that is to say: a vessel to which no distinct nationality could be assigned, then she has been guilty of no infraction of the law.

If by the act of transfer from British to American citizens, she was utterly denationalized, and became a mere rover of the sea, without country, she is not within the pale of the act of Congress. It was not directed against such possible class of ships. It was not the mischief intended to be cured. We must have new legislation to render forfeit a vessel thus circumstanced merely.

The theory of the learned Circuit Judge, as expressed in his oral opinion, was that the vessel was without nationality; she was neither British, Canadian or American; but still foreign to the United States, and hence she came within the definition of "foreign vessels." We submit that such reasoning and construction would render the provision utterly insignificant. The words "foreign vessels," used in the enacting clause, and "the vessels of any foreign nation," employed in the proviso, were used in

the same sense; and it would be difficult to conceive how the vessel could be *foreign* within the meaning of the act, without awarding to her a country or nationality of some degree, somewhere. But if she can be and was thus circumstanced, as is insisted, we repeat, she is not such foreign vessel as comes within the retaliatory prohibitive character of the enactment. Such, Judge Betts, in the case referred to, pronounces its sole character to be. In arriving at his conclusions, he recurred to the public history of the times, and situation of the country, to ascertain the meaning of the law; as was done in construing statutes in

Preston v. Browder, 1 *Wheat.* 115.

Aldridge v. Williams, 3 *How.* 1.

Mr. Legare, then Attorney General, in June, 1842, put a very peculiar construction upon the act of 1817, to the effect that the enacting clause extended a privilege to foreign vessels, and the proviso was intended to restrain it. This led immediately thereafter to the issuing of instructions to the officers of the customs throughout the country, and under which Appellant's vessel was seized. Judge Betts, in the case referred to, strongly dissents from Mr. Legare's opinion, and shows that it is at variance with the earlier and contemporaneous expositions of the statute, and to its uniform practical construction during a period of thirty years.

4 Op. Attys. Gen. 69.

The instructions and regulations issued to the customs officers, and which it is said emanated from Mr. Legare's opinion, are as condensed by the "Revised Customs Regulations" of 1869:

"No merchandise can be imported into the United States in undocumented vessels owned by citizens of the United States." The act of March 1, 1817, is cited in the margin as sanctioning this regulation. Secs. 1, 2.

It is this departmental construction that we contend against; and insist, that the next succeeding paragraph in the regulations, is coextensive with, and exhaustive of the whole prohibitory force and intent of the act:

"No merchandise, except such as is the growth, production or

manufacture of the country to which the vessel belongs, or such as is usually or necessarily first shipped therefrom, can be imported into the United States in any vessel belonging to citizens or subjects of any foreign nation imposing similar restrictions upon vessels of the United States."

We insist that American-owned foreign bottomed vessels, were not intended, and cannot, by fair and reasonable construction, be brought within the prohibitions of the act.

N. J. EMMONS,
Attorney, and of Counsel for Appellant.

In the Supreme Court of the United States.

JAMES MURRAY,
vs.
THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

This case turns upon the interpretation of the act of 1817, quoted by the appellant.

We have been able to find no authorities other than those referred to in the brief of the appellant.

A perusal of the message of President Madison, of December 3, 1816, and of the debates in the House of Representatives upon the bill whilst pending, (Annals of Congress, 1816–'17, pp. 772–841,) shows that the act of 1817 was intended to be prohibitory.

The language of the *proviso* justifies the opinion given by Mr. Legaré in 1843; for it is not said that "in case any foreign nation has not adopted, &c., a similar regulation, *this* regulation shall not apply *either to vessels of the United States* or to the vessels of such foreign nation;" on the contrary, in the case supposed, the regulation is to continue as to the former class of vessels; that is, in such case they shall do *all* the carrying.

The policy of the act, which is to foster free trade between United States and such foreign nations as adopt a similar policy, does not cover the vessel seized here, which has no national character whatever. The Mary Merritt is not *American*; see act of 1792, ch. 1, (1 Stat., 287,) and others; 1 Parsons' Shipping 28; nor is it *British*; Abbott, Shipping 79, and (since) 17 and 18 Vict., c. 104; 18 and 19 Vict., c. 91; 25 & 26 Vict., c. 63.

GEO. H. WILLIAMS,
Attorney General.
S. F. PHILLIPS,
Solicitor General.